

# **EXHIBIT 7**

1025 Warren draft

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DRAFT VERSION

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 - - - - -  
4 IN RE: PHARMACEUTICAL ) MDL NO. 1456  
5 INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
6 PRICE LITIGATION ) 01-CV-12257-PBS  
7 THIS DOCUMENT RELATES TO )  
8 U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris  
9 the Florida Keys, Inc. )  
10 v. ) Chief Magistrate  
11 Abbott Laboratories, Inc., ) Judge Marianne B.  
12 No. 06-CV-11337-PBS ) Bowler  
13 - - - - -

14  
15 Videotaped deposition of JOHN WARREN  
16 (Pages 1 - ^)

17  
18 Baltimore, Maryland  
19 Tuesday, November 7, 2007  
20 9:00 a.m.  
21  
22

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1  
2 Videotaped deposition of JOHN WARREN, held at  
3 the law offices of Hogan & Hartson, 111 South

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4 to refer to that we read earlier, correct?

5 A. Yes.

6 Q. Did you participate at all in drafting  
7 paragraph 42 of the complaint?

8 A. I did not.

9 Q. When was the first time you saw paragraph  
10 42 of the complaint?

11 A. Just when I first saw the complaint  
12 earlier.

13 Q. Given the material that you've looked at  
14 here does paragraph 42 of the complaint as quoted  
15 here in interrogatory number 7 continue to be an  
16 accurate reflection of what you understand AWP to  
17 represent?

18 MR. DRAYCOTT: Objection. You can  
19 answer.

20 A. Yes.

21 Q. You still believe that AWP is used to  
22 refer to the price at which a pharmaceutical firm or

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1 a wholesaler sells a drug to a retail customer who  
2 then administers it to a patient?

3 A. That is what I believe AWP is meant to  
4 represent, yes.

5 Q. Meant by whom?

6 A. Meant by the government.

7 Q. Do you believe that that's what  
8 manufacturers mean when they publish an AWP?

9 MR. DRAYCOTT: Objection. You can  
10 answer.

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11 A. I believe in some cases no.

12 Q. We've seen OIG reports and statements by  
13 the President of the United States and testimony  
14 from the administrator -- former administrator of  
15 CMS indicating that they don't use AWP to refer to  
16 the price at which a pharmaceutical firm or a  
17 wholesaler sells a drug to a retail customer who  
18 then administers it to a patient. Do you still  
19 believe that that's what it refers to?

20 MR. DRAYCOTT: Objection. Asked and  
21 answered. You can answer again.

22 A. I believe that's what it's meant to refer

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1 to.

2 Q. I'm asking it whether that is what it is  
3 used to refer to, not what it is meant to refer to?

4 MR. DRAYCOTT: Objection.

5 A. Used by whom?

6 Q. Precisely. Do you know anybody who uses  
7 AWP in that manner?

8 A. No.

9 Q. And so when paragraph 42 of the complaint  
10 states that AWP is used to refer to the price at  
11 which a pharmaceutical firm or a wholesaler sells a  
12 drug to a retail customer who then administers it to  
13 a patient, it's your testimony that no one uses  
14 AWP -- actually uses AWP in that manner, correct?

15 MR. DRAYCOTT: Objection.

16 A. I believe the program means for it to

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17 refer to that. But the practicality it is not used  
18 in that manner.

19 Q. The program is not a person, correct?

20 A. Correct.

21 Q. Limiting ourselves to natural persons,  
22 there is no natural person who to your knowledge

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1 uses AWP in the manner set forth in paragraph 42,  
2 correct?

3 MR. DRAYCOTT: Objection.

4 A. No.

5 Q. How is it that the program can use a term  
6 to refer to something when no person uses it in that  
7 way?

8 A. This I think is going to the intention  
9 behind what Medicare wanted the AWP to represent.  
10 The --

11 Q. AWP currently is a creature of statute,  
12 right?

13 A. Right.

14 Q. The relevant intention is not CMS's  
15 intent, right?

16 MR. DRAYCOTT: Objection.

17 Q. It's Congress' intent, correct?

18 A. We have the obligation to implement the  
19 statute.

20 Q. And we've already determined that when  
21 you implement the statute you look to published  
22 numbers, correct?

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